

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte NORMA Y. BARFIELD and  
LAURIE A. BERG

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Appeal No. 97-3707  
Application 08/595,910<sup>1</sup>

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ON BRIEF

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Before CALVERT, ABRAMS, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed February 6, 1996.

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Norma Y. Barfield et al. appeal from the final rejection of claims 9 through 12, all of the claims pending in the application.<sup>2</sup>

The invention relates to "an accessory device for opening easy-open twist-off caps on bottles" (specification, page 2). A copy of the claims on appeal appears in the appendix to the appellants' brief (Paper No. 12).

The references relied upon by the examiner as evidence of obviousness are:

Delsack	5,038,644	Aug. 13, 1991
Schultz	5,257,566	Nov. 2, 1993
Tegethoff	5,329,832	Jul. 19,
1994		
Fox	2,255,082 A	Oct. 28, 1992
(British Pat. Document)		

The claims stand rejected under 35 U.S.C. § 103 as follows:

a) claim 9 as being unpatentable over Fox in view of Delsack;

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<sup>2</sup> Claims 9 through 12 have been amended subsequent to final rejection.

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b) claims 10 and 11 as being unpatentable over Fox in view of Delsack, and further in view of Tegethoff; and

c) claim 12 as being unpatentable over Fox in view of Delsack and Tegethoff, and further in view of Schultz.

Reference is made to the appellants' brief (Paper No. 12) and to the examiner's answer (Paper No. 13) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.

Fox, the examiner's primary reference, discloses a hand-held device for gripping and rotating objects such as bottle caps, jar lids, door knobs, and the like. The Abstract of the reference is illustrative:

[a] device 2 for gripping differently sized objects 4 that require rotating by hand, which device 2 comprises a length of flexible material which in use is formed into a part circle 8 of a diameter appropriate to a chosen object to be gripped, and a handle portion 10. The flexible material may be of rubber or plastic and sufficiently inelastic that it will not noticeably stretch during rotation. The device may have a member 16 for receiving a person's thumb during use of the device, the member 16 having a body part (18, fig 4) and a pair of straps (20, fig 4) which permit the body part to slide. The device may be joined at the handle end by means of bonding material (fig 3), retractable press studs

(fig 9), by riveting the adjacent ends together (fig 6), or by a link (fig 7). The device may have a scalloped or roughened outer surface for gripping purposes (36, fig 3). The inner surface of the device may be ribbed, roughened or toothed in order to grip the object. The teeth may be made from metal.

The examiner concedes that Fox does not meet the limitation in independent claim 9 requiring a plurality of finger loops (answer, page 3). In this regard, the Fox device includes but a single finger loop in the form of member 16.

Delsack discloses a metal or hard plastic finger wrench for threading and unthreading articles such as nuts and bolts. The wrench comprises

a pair of slidably interconnected substantially flat and coplanar jaw members, finger-engageable formations on the respective jaw members, such as finger openings in the respective jaw members, or depressions at the outer ends of the respective jaw members, and substantially coplanar substantially parallel gripping edges on the jaw members between the finger formations, the jaw members having a closed position in which the gripping edges are in substantial abutment, or closely spaced apart, and the jaw members being movable from the closed position progressively to increase the distance between the gripping edges and provide an opening into which the article can be fitted with the gripping edges embracing the article whereby torque

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may be applied to the article through the gripping edges [column 1, lines 52 through 67].

In rejecting independent claim 9 under 35 U.S.C. § 103, the examiner contends that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the opener of [Fox] by including a second finger loop as taught by Delsack in order to provide a more secure hold on the device" (answer, page 3).

The appellants' argument that this proposed combination of Fox and Delsack is predicated on impermissible hindsight (see pages 9 through 11 in the brief) is persuasive. Considering the fundamental differences between the devices disclosed by Fox and Delsack, it is apparent that the examiner has improperly employed claim 9 as an instruction manual to selectively piece together isolated disclosures in the prior art in order to support a conclusion of obviousness (see In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992)).

Moreover, even if Fox and Delsack were combined in the manner proposed, the resulting device still would fall short

of meeting the limitations in claim 9 requiring the web to be "sized relative to the user's hand when secured thereon to overlies the thumb and index finger between respective second knuckles thereof and the hand web portion between the thumb and index finger, with its said opposite ends then being near the second knuckles." As correctly pointed out by the appellants (see page 6 in the brief), the portion of the Fox device corresponding to the recited web, the length of flexible material, is far longer than the web size required by claim 9 in order to provide the Fox device with a handle portion 10 (see Fox's Figures 1 and 5(a)). There is nothing in the combined teachings of Fox and Delsack which would have suggested shortening the length of Fox's web to the size recited in claim 9, thereby eliminating the handle portion and changing the very nature of the Fox device.

Tegethoff and/or Schultz, applied to support the standing rejections of dependent claims 10 through 12, do not cure the foregoing deficiencies in the basic Fox-Delsack combination.

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Thus, the examiner's conclusion that the differences between the subject matter recited in claims 9 through 12 and the applied prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art is not well founded. Accordingly, we shall not sustain the standing 35 U.S.C. § 103 rejections of these claims.

The decision of the examiner is reversed.

REVERSED

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IAN A. CALVERT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	
Administrative Patent Judge	)	APPEALS AND
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	)	INTERFERENCES
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JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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